THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 4900 of 2004

O r d e r:

The petitioner was appointed as Driver in the respondents-APSRTC in the year 1975. While working as such, on 05.12.2000, the bus driven by him on the route Mehdipatnam to Osman Sagar met with an accident, resulting in instantaneous death of pillion rider of TVS Scooty bearing No. AP 11 H 966. A case of rash and negligent driving was registered against the petitioner, and even a departmental enquiry was initiated against the petitioner. The charges of rash and negligent driving of the vehicle with lack of anticipation, having been proved in the enquiry, he was removed from service by order dated 22.12.2001 of respondent No.2. Assailing the said order of removal, the petitioner preferred appeal before the 3rd respondent, which were rejected. Thereupon, he raised an industrial dispute in I.D. No. 64 of 2002, and the Labour Court, by award dated 10.09.2003, directed the respondents-Corporation to reinstate the petitioner into service with continuity of service, but without back wages and attendant benefits. Assailing the award of the Labour Court, in so far as denying back wages and attendant benefits, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the Labour Court, having set aside the order of removal, passed against the petitioner by the disciplinary authority as confirmed by the appellate authority, and having ordered his reinstatement into service, ought to

have granted back wages and other attendant benefits and non-granting of the same is illegal and arbitrary. He submits that when termination is found to be illegal the consequential order of grant of back wages must follow, and in support of the said contention he relied on the decision of a Division Bench of this Court in ***Divisional Engineer Telecom v. Mamidi Venkata Ramana***[1], and the decision of the apex Court in ***Shri I.B. Vhandra v. Union of India and others***[2]. He further submits that subsequent to passing of award, the Criminal Court acquitted the petitioner from the criminal case, registered on the same charges. He thus, prays to set aside the award of the Labour Court, in so far as it denied back wages and other attendant benefits.

On the other hand, learned Standing Counsel for the respondents-APSRTC submitted that the charges against the petitioner stood proved in the departmental enquiry. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the Labour Court, having found that the alleged degree of misconduct against the petitioner will not attract for his removal from service, ordered reinstatement of the petitioner subject to certain conditions without backwages, which cannot be said to be illegal and arbitrary, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on the ground that on 05.12.2000 he drove the bus in a rash and negligent manner and caused fatal accident by hitting a Scooty. The charge leveled against the petitioner stood proved in the departmental enquiry. The Labour Court, having found that the alleged degree of misconduct against the petitioner will not attract for his removal from service, felt that the respondents-Corporation ought to have imposed a minor punishment basing on the material available on record, and the punishment awarded by the disciplinary authority being excessive and disproportionate to the misconduct, set aside the order of removal and directed reinstatement of the petitioner into service with continuity of service, but without backwages and other attendant benefits. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural

justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate authority, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

It is the contention of the petitioner that subsequent to passing of award by the Labour Court, the petitioner was acquitted from the criminal case, filed on the same charges. The said criminal case judgment is not helpful to the petitioner, for the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different, in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative (See **Cholan Roadways Ltd. v. G. Thirugnanasambandam**[4]). In the instant case, though the petitioner was acquitted by the criminal court in the criminal case, the fact remains, in the departmental enquiry, he was found guilty of the charges leveled against him. Therefore, his

mere acquittal by the criminal court in the criminal case, does not automatically give the employee a right to be reinstated, and in the instant case, the petitioner having been reinstated into service, prior to his acquittal in the criminal case, cannot seek the benefit of backwages etc., and more so when the approach and objectives of the disciplinary proceedings and criminal proceedings are altogether distinct and different.

In that view of the matter, I find no reason whatsoever to interfere with the impugned award of the Labour Court, which in fact, is a benevolent one.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 14th November, 2006.
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1 2003 (3) ALD 290 (DB)
2 1994 Supreme Court 878
[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479
[3] (2006) 1 SCC 63
[4] (2005) 3 SCC 241